



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
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)	ISCR Case No. 12-10280
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

01/27/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. He has a history of financial problems or difficulties, which he addressed by obtaining a discharge of his debts in a Chapter 7 bankruptcy case in November 2015. It is too soon to tell if he will conduct his future financial affairs in a responsible way. He did not present sufficient evidence to explain and mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on May 9, 2012.¹ About three years later, after reviewing the application and information gathered during a background investigation, the Department

¹ Exhibit 5 (this document is commonly known as a security clearance application).

of Defense (DOD),² on May 21, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR in a July 13, 2015 response.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.⁴ On October 28, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁵ This so-called file of relevant material (FORM) was mailed to Applicant, who received it on November 17, 2015. Applicant replied in a timely manner and submitted a two-page memorandum along with the discharge order from his Chapter 7 bankruptcy case, which is admitted without objections as Exhibit A. The case was assigned to me on January 6, 2016.

Findings of Fact

Applicant is a 54-year-old employee who is seeking to obtain a security clearance. He is employed as a driver for a trucking company. He has a problematic financial history, which is documented and established by credit reports from 2012, 2014, and 2015.⁶

The 2012 credit report shows (1) an unpaid judgment for \$1,640, (2) a paid foreclosure on a mortgage loan, and (3) 19 collection accounts, 2 of which are paid, for a total of \$7,685 past due.⁷

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Directive, Enclosure 3, ¶ E3.1.7.

⁵ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁶ Exhibits 6, 7, and 8.

⁷ Exhibit 6.

The 2014 credit report shows (1) a past-due auto loan for \$254, (2) 17 medical collection accounts, 3 of which are paid, for a total of \$5,795, and (3) a \$600 collection account.⁸

The 2015 credit report shows (1) a \$410 collection account for wireless services, (2) six medical collection accounts, two of which are paid, for a total of \$1,760, and (3) a past-due auto loan for \$8,832.⁹

The SOR, as amended,¹⁰ is based largely on the 2014 credit report. The SOR allegations, as amended, consist of (1) 14 medical collection accounts for a total of \$5,795, (2) 2 collection accounts for a total of \$1,085, and (3) a past-due auto loan for \$8,832. Applicant admitted the SOR allegations in his response to the SOR and in his response to the FORM. He also stated that he fell behind on the auto loan due to a wage garnishment for medical accounts, and this forced him to consent to a repossession of the auto. He further stated that he sought relief through a Chapter 7 bankruptcy case and received a discharge of his debts in November 2015.¹¹ Other than the Chapter 7 discharge order, he provided no documentation in support of his case.

In his response to the FORM, Applicant provided the following additional explanation:

In addition to the bankruptcy we have made adjustments to our living expenses that includes a rent to own home that will be paid for in less than five years. We have also made other reductions so that we can cover all future obligations. Our household size is also smaller with three of our children out on their own, with another that is full-time employed and the youngest still at home.

He also stated that his was a simple family and they do not live a lavish lifestyle.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent

⁸ Exhibit 7.

⁹ Exhibit 8.

¹⁰ Department Counsel amended the SOR in their written brief by adding two additional delinquent debts in SOR ¶¶ 1.p and 1.q.

¹¹ Exhibit A (the discharge order shows that the case was filed jointly with his spouse).

¹² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

person a security clearance is not a determination of an applicant's loyalty.²² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²³ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²⁴ The overall concern is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁵

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion of inability or unwillingness to satisfy debts²⁶ and a history of not meeting financial obligations²⁷ within the meaning of Guideline F. In addition, the totality of Applicant's financial history, as shown by the credit reports from 2012, 2014, and 2015, reflect a pattern of financial irresponsibility.

In mitigation, I have considered six mitigating conditions under Guideline F,²⁸ and none, individually or taken together, is sufficient to mitigate the security concern. With

²² Executive Order 10865, § 7.

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

²⁵ AG ¶ 18.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶ 20(a)–(f).

that said, I recognize that many of the delinquent debts in the SOR are medical collection accounts that stem from necessary medical care and treatment. As a result, those matters receive reduced weight in my analysis, but they are still relevant. Moreover, Applicant's recent financial history is telling. It includes the voluntary repossession of his auto and the 2015 Chapter 7 bankruptcy case. Those events are obvious warning signs of financial distress and instability. Although Applicant had his debts discharged in the bankruptcy case and received the fresh start provided for in federal bankruptcy law, it is too soon to tell if he will conduct his future financial affairs in a responsible way or if he will return to the pattern of financial problems as reflected in the credit reports from 2012, 2014, and 2015.

Because Applicant chose to have his case decided without a hearing, I am unable to evaluate his demeanor. Limited to the written record, I am unable to assess his sincerity, candor, or truthfulness in this proceeding.

Given the totality of circumstances, Applicant's history of financial problems creates doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²⁹ Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.q:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

²⁹ AG ¶ 2(a)(1)–(9).